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Remeggious Krishnan v SKS Southern Sdn Bhd (formerly known as MB Builders Sdn Bhd)

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FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-50–09 OF 2021(J)
VERNON ONG, ZALEHA YUSOF AND HARMINDAR SINGH FCJJ
6 MARCH 2023

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Land Law — Possession — Delivery of vacant possession — Manner of delivery of vacant possession — Sale and purchase agreement provided that vacant possession shall be delivered when water and electricity were ready for connection — Developer delivered vacant possession with no electricity connection — Purchaser filed two separate claims in relation to same property with Tribunal for Home Buyers Claims against developer — Whether filing of two separate claims involving different matters in respect of same property contrary to ss 16M and 16Q of the Housing Development (Control and Licensing) Act 1966 — Whether it was appropriate to award damages for non-connection of electricity to property

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Statutory Interpretation — Construction of statutes — Intention of Parliament — Interpretation of ss 16M and 16Q of the Housing Development (Control and Licensing) Act 1966 — Interpretation of words 'the same matter' in s 16Q of Housing Development (Control and Licensing) Act 1966 — Monetary jurisdiction of Tribunal for Home Buyers Claims under s 16M of Housing Development (Control and Licensing) Act 1966 — Whether filing of two separate claims involving different matters in respect of same property contrary to ss 16M and 16Q of the Housing Development (Control and Licensing) Act 1966 — Housing Development (Control and Licensing) Act 1966 ss 16M & 16Q

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The appellant was the purchaser of a property ('the property') in a housing project developed by the respondent. Pursuant to cl 25 of the sale and purchase agreement dated 6 February 2017 ('the SPA') signed between the parties, the delivery of vacant possession of the property shall be 36 months from the date of the SPA ie on or before 6 February 2020. In relation to the manner of delivery of vacant possession of the property, cl 27 of the SPA stated that the vacant possession shall be delivered when the water and electricity were ready for connection to the said property. In the present case, the vacant possession was delivered with no electricity connection to the property, hence, the appellant filed two separate claims with the Tribunal for Home Buyers Claims ('the tribunal') against the respondent. The first claim was for 'non-technical claim' amounting to RM49,832 in relation to the delay in connection of the electricity whereas the second claim was for technical claim amounting to

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RM40,000. The tribunal heard the non-technical claim and awarded RM16,452.05 with costs of RM400 ('the award') in favour of the appellant. The respondent's judicial review application against the award was dismissed by the High Court but on appeal, the Court of Appeal found in favour of the respondent. In the present appeal, the issues arose were: (a) whether the filing of two separate claims involving different matters in respect of the same property was contrary to ss 16M and 16Q of the Housing Development (Control and Licensing) Act 1966 ('the HDA'); and (b) whether it was appropriate to award damages for the non-connection of electricity to the said property.

Held, allowing the appeal with costs of RM50,000 to the appellant subject to allocator, setting aside the order of the Court of Appeal, and restoring the order of the High Court:

(1) It was beyond doubt that the HDA was enacted as a piece of social legislation to protect house buyers. With that in mind, any term or provision in the statute must be interpreted in a way which ensured maximum protection for the house buyers against the developer. It was therefore imperative that ss 16M and 16Q of the HDA be interpreted in such a way as to provide protection of house buyers in keeping with the intention of Parliament (see paras 14–15).

(2) In respect of s 16Q of the HDA, if it was Parliament's intention for 'the same matter' to be interpreted as 'the same Property' as suggested by the Court of Appeal, the drafters of the legislation would have used the term 'property' or 'housing accommodation'. For these reasons, the court disagreed with the Court of Appeal that the words 'same matter' in s 16Q of the HDA must mean the 'same property'. The court was of the view that the 'same matter' could only mean the same issue or type of claim and not the same property. The court, therefore, agreed with the position of High Court that there were two different matters in the present case, as such, s 16Q of the HDA was inoperative in the present case (see paras 17–18).

(3) The monetary jurisdiction of the tribunal of RM50,000 in s 16M of the HDA only applied to 'a claim' and not 'all the claims'. Thus, the court agreed with the appellant's submission that s 16M did not limit the appellant's two separate and distinct claims to a combined amount lesser than RM50,000. As long as each of the appellant's claims in respect of different and distinct matters did not exceed the monetary jurisdiction of the tribunal, the appellant was not in violation of s 16M of the HDA (see paras 16 & 19).

(4) The Court of Appeal held that since cl 27(1)(c) of the SPA stated that 'ready for connection', it did not mean that the subject property must be installed with actual supply of electricity. But this could not be the correct

A interpretation as it overlooked cl 1(k) of the SPA which (when read together with cl 27(1)(c) of the SPA) provided that 'ready for connection' meant electrical points fully functional and supply was available for tapping into the property. It must follow that there was an obligation on the developer to provide actual supply of water and electricity to the B property. In the circumstances, the court agreed that the respondent was in breach of cl 27of the SPA as the delivery of vacant possession was invalid since there was no electricity supply connected at the time. The High Court was right to observe that the appellant suffered losses as he was deprived of the opportunity to utilize and enjoy the property as it C lacked electricity supply (see paras 22–23).

(5) The court disagreed with the Court of Appeal's decision that no losses could have been suffered by the appellant as the respondent was still within the time frame for delivery of vacant possession. This was because D the time frame for delivery of vacant possession was quite separate from the manner of delivery of vacant possession. The appellant was entitled to claim compensatory damages for breach of cl 27 of the SPA. This was separate from any claim for liquidated damages for late delivery of possession under cl 25 of the SPA. Therefore, damages were justifiably E ordered by the tribunal for the delay of 63 days for breach of cl 27 (see para 24).

[Bahasa Malaysia summary

Perayu adalah pembeli sebuah hartanah ('hartanah tersebut') dalam projek F perumahan yang dibangunkan oleh responden. Menurut klausa 25 perjanjian jual beli bertarikh 6 Februari 2017 ('PJB tersebut') yang ditandatangani antara pihak-pihak, serahan milikan kosong hartanah tersebut hendaklah dibuat 36 bulan dari tarikh PJB tersebut iaitu pada atau sebelum 6 Februari 2020. Berhubung dengan cara serahan milikan kosong hartanah tersebut, klausa 27 G PJB tersebut menyatakan bahawa milikan kosong hendaklah diserahkan apabila air dan elektrik telah sedia untuk disambungkan ke hartanah tersebut. Dalam kes ini, milikan kosong telah diserahkan tanpa sambungan elektrik ke atas hartanah tersebut, oleh itu, perayu memfailkan dua tuntutan berasingan dengan Tribunal Tuntutan Pembeli Rumah ('tribunal') terhadap responden. H Tuntutan pertama adalah untuk 'tuntutan bukan teknikal' berjumlah RM49,832 berhubung kelewatan sambungan elektrik manakala tuntutan kedua adalah tuntutan teknikal berjumlah RM40,000. Tribunal tersebut mendengar tuntutan bukan teknikal tersebut dan memberikan award berjumlah RM16,452.05 dengan kos RM400 ('award tersebut') memihak I kepada perayu. Permohonan semakan kehakiman responden terhadap award tersebut telah ditolak oleh Mahkamah Tinggi tetapi atas rayuan, Mahkamah Rayuan membuat keputusan yang memihak kepada responden. Dalam rayuan semasa, isu-isu yang timbul adalah: (a) sama ada pemfailan dua tuntutan berasingan yang melibatkan perkara yang berbeza berkenaan dengan hartanah

yang sama adalah bertentangan dengan ss 16M dan 16Q Akta Pembangunan Perumahan (Kawalan dan Pelesenan) 1966 ('APP'); dan (b) sama ada wajar untuk mengawardkan ganti rugi bagi kegagalan penyambungan elektrik ke atas hartanah tersebut.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM50,000 kepada perayu tertakluk kepada alokator, mengenepikan perintah Mahkamah Rayuan dan mengembalikan perintah Mahkamah Tinggi:

(1) Tidak dapat dinafikan bahawa APP telah digubal sebagai satu perundangan sosial untuk melindungi pembeli rumah. Dengan itu, apa-apa terma atau peruntukan dalam statut tersebut mesti ditafsirkan dengan cara yang memastikan perlindungan maksimum bagi pembeli rumah terhadap pemaju. Oleh itu, adalah penting bahawa ss 16M dan 16Q APP ditafsirkan sedemikian rupa untuk memberi perlindungan kepada pembeli rumah selaras dengan hasrat Parlimen (lihat perenggan 14–15).

(2) Berkenaan dengan s 16Q APP, jika ia adalah hasrat Parlimen untuk 'perkara yang sama' ditafsirkan sebagai 'Hartanah yang sama' seperti yang dicadangkan oleh Mahkamah Rayuan, penggubal undang-undang akan menggunakan istilah 'Hartanah' atau 'penginapan perumahan'. Atas sebab ini, mahkamah tidak bersetuju dengan Mahkamah Rayuan bahawa perkataan 'perkara yang sama' dalam s 16Q APP mesti bermaksud 'Hartanah yang sama'. Mahkamah berpandangan bahawa 'perkara yang sama' hanya boleh membawa maksud isu atau jenis tuntutan yang sama dan bukan hartanah yang sama. Oleh itu, mahkamah bersetuju dengan pendirian Mahkamah Tinggi bahawa terdapat dua perkara berbeza dalam kes ini, oleh itu, s 16Q APP tidak berkuat kuasa dalam kes ini (lihat perenggan 17–18).

(3) Bidang kuasa kewangan tribunal sebanyak RM50,000 dalam s 16M APP hanya terpakai untuk 'suatu tuntutan' dan bukan 'semua tuntutan'. Oleh itu, mahkamah bersetuju dengan hujahan perayu bahawa s 16M tidak mengehadkan dua tuntutan berasingan dan berbeza perayu kepada jumlah gabungan kurang daripada RM50,000. Selagi setiap tuntutan perayu berkenaan dengan perkara yang berasingan dan berbeza tidak melebihi bidang kuasa kewangan tribunal, perayu tidak melanggar s 16M APP (lihat perenggan 16 & 19).

(4) Mahkamah Rayuan memutuskan bahawa memandangkan klausa 27(1)(c) PJB tersebut menyatakan bahawa 'sedia untuk sambungan', ia tidak bermakna bahawa hartanah tersebut mesti dipasang dengan bekalan elektrik sebenar. Tetapi ini tidak boleh menjadi tafsiran yang betul kerana ia terlepas pandang klausa 1(k) PJB tersebut yang (apabila dibaca bersama klausa 27(1)(c) PJB tersebut) menyatakan 'sedia untuk sambungan' bermakna sambungan-sambungan elektrik berfungsi

sepenuhnya dan bekalan telah tersedia untuk digunakan di dalam hartanah tersebut. Lantaran itu, terdapat kewajipan ke atas pemaju untuk menyediakan bekalan air dan elektrik sebenar bagi hartanah tersebut. Dalam keadaan tersebut, mahkamah bersetuju bahawa responden melanggar klausa 27 PJB tersebut kerana serahan milikan kosong adalah tidak sah kerana tiada bekalan elektrik disambungkan ketika itu. Mahkamah Tinggi berhak memutuskan bahawa perayu mengalami kerugian kerana dia telah kehilangan peluang untuk menggunakan dan menikmati hartanah tersebut akibat ketiadaan bekalan elektrik (lihat perenggan 22–23).

(5) Mahkamah tidak bersetuju dengan keputusan Mahkamah Rayuan bahawa tiada kerugian boleh dialami oleh perayu kerana responden masih dalam tempoh masa untuk menyerahkan milikan kosong. Ini kerana tempoh masa serahan milikan kosong adalah berasingan daripada cara serahan milikan kosong. Perayu berhak menuntut ganti rugi pampasan bagi pelanggaran klausa 27 PJB tersebut. Ini adalah berasingan daripada apa-apa tuntutan untuk ganti rugi yang ditentukan untuk serahan lewat milikan di bawah klausa 25 PJB tersebut. Oleh itu, ganti rugi telah diperintahkan secara wajar oleh tribunal tersebut untuk kelewatan selama 63 hari bagi pelanggaran klausa 27 (lihat perenggan 24).]

Cases referred to

Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals [2020] 1 MLJ 281; [2020] 1 CLJ 162, FC (refd)

Asia Pacific Higher Learning Sdn Bhd (registered owner and licensee of the higher learning institution Lincoln University College) v Majlis Perubatan Malaysia & Anor [2020] 2 MLJ 1; [2020] 3 CLJ 153, FC (refd)

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393; [1998] 2 CLJ 75, FC (refd)

Hoya Holding Sdn Bhd v Chia Thin Hing @ Cheah Thin Heng & Anor [1994] MLJU 55, HC (refd)

Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281; [1995] 1 CLJ 609, HC (refd)

PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals [2021] 2 MLJ 60, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 78

Housing Development (Control and Licensing) Act 1966 ss 3, 16M, 16M(1), 16Q, Schedule H

Limitation Act 1953 s 6

Rules of Court 2012 O 53 r 7(1)

Appeal from: *SKS Southern Sdn Bhd (dahulu dikenali sebagai MB Builders Sdn Bhd) v Tribunal Tuntutan Pembeli Rumah Malaysia & Anor* [2021] MLJU 363 (Court of Appeal, Putrajaya)

Lum Kok Kiong (with Tan Ming Chu) (Lum Kok Kiong & Co) for the appellant. Chen Wai Jiun (WJ Chen & Co) for the respondent.

Harmindar Singh FCJ (delivering judgment of the court):

INTRODUCTION

[1] The appeal concerns the jurisdiction of the tribunal for Home Buyers Claims ('tribunal') in respect of ss 16Q and 16M of the Housing Development (Control and Licensing) Act 1966 ('the HDA 1966'). Specifically, the appeal concerns important questions as to jurisdiction of the tribunal in respect of split claims as well as issues pertaining to the delivery of vacant possession.

[2] The present appeal emanates from a judicial review application filed by the respondent to review the award of the tribunal dated 16 January 2019 ('the award'). The tribunal had allowed the claim of the appellant. The High Court dismissed the respondent's judicial review application on 22 September 2019. The Court of Appeal, however, allowed the respondent's appeal, set aside the said High Court order and quashed the award of the tribunal on 2 November 2020.

[3] Undeterred, the appellant successfully obtained leave of this court to file an appeal on the following questions of law:

(a) *Question 1:*
In view of s 16Q and s 16M of the Housing Development (Control and Licensing) Act 1966, whether there is a jurisdiction for the tribunal for home buyers claims to hear two separate claims in respect of the same subject property where the total amount of dispute of these two claims exceeds the monetary jurisdiction of RM50,000;

(b) *Question 2:*
Whether the developer can be exempted to pay damages to the purchaser when the developer was in breach of the manner of delivery of vacant possession of the property as prescribed in Schedule H so long as the developer is still within the timeline to deliver vacant possession of the property;

(c) *Question 3:*
By virtue of s 6 of Limitation Act 1953, whether a purchaser's right to claim for breach of the manner of delivery of a property under Schedule H arise after the actual delivery of vacant possession of a property or after

A the deadline to deliver the vacant possession of a property; and

(d) *Question 4:*
In view of the definition of 'ready for connection' as stated in cl 1(k) of the sale and purchase agreement and cl 22 of the sale and purchase agreement as well as admission of liability by the respondent, whether cl 27 of the sale and purchase agreement is breached.

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[4] We heard the appeal on 25 January 2022. After considering the submissions put forward by the parties, we came to the unanimous view that the appeal should be allowed. The order of the Court of Appeal was accordingly set aside and the order of the High Court restored with costs. We now provide our full grounds for our decision.

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THE SALIENT FACTS

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[5] The respondent is the developer of a residential project identified as 'Sky Habitat @ Meldrum Hill, Johor Bahru' ('the project'). The appellant is the purchaser of a unit of apartment identified as Parcel No L-15-08 in the project ('the property'). By a sale and purchase agreement dated 6 February 2017 ('the SPA'), the appellant agreed to purchase the property from the respondent at the discounted price of RM569,080.

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[6] By cl 25(1) of the SPA, the time for delivery of vacant possession of the property shall be 36 months from the date of the SPA, namely on or before 6 February 2020. The manner of delivery of vacant possession was set out in cl 27 of the SPA, the relevant part of which appears as follows:

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Clause 27 — Manner of delivery of vacant possession

(1) The Developer shall let the Purchaser into possession of the said parcel upon the following:

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(a) ...

(b) ...

(c) water and electricity supply are ready for connection to the said Parcel;

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[7] Vide a notice dated 24 April 2018, the respondent informed the appellant of its readiness to deliver vacant possession of the property. The vacant possession was delivered with no electricity connection to the property. The application to Tenaga Nasional Bhd ('TNB') was sent on 19 June 2018 and the deposit paid by the respondent on 26 June 2018.

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[8] On 21 December 2018, the appellant filed two separate claims with the tribunal against the respondent. They were registered under Claim No TTPR/J/1094/18 and Claim No TTPR/J/1095(T)/18 respectively. Claim

No TTPR/J/1094/18 was expressed to be for 'non-technical claim for RM49,832' ('non-technical claim') whilst Claim No TTPR/J/1095(T)/18 is for 'technical claim for RM40,000' ('technical claim'). A

[9] On 16 January 2019, the tribunal heard the non-technical claim and awarded a sum of RM16,452.05 and costs of RM400 in favour of the appellant ('the award') for the delay in the connection of the electricity. This award formed the subject matter of the respondent's judicial review application. The tribunal adjourned the hearing of technical claim to a date to be fixed and subsequently made another award thereunder. B C

PROCEEDINGS IN THE COURTS BELOW

[10] The respondent, being aggrieved with the award, applied for leave to issue judicial review against the tribunal and the appellant. On 23 April 2019, the High Court granted leave to the respondent to commence the judicial review. In the application for judicial review, the respondent sought to declare the impugned decision as invalid, null and void and of no effect and that an order of certiorari be issued to quash the award based on the following reasons: D

(a) that the appellant filed two separate claims with the tribunal, contrary to ss 16M(1) and 16Q of the HDA; and E

(b) that the tribunal had erred in awarding damages to the appellant for the non-connection of electricity to the property.

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[11] The High Court, after hearing the application for judicial review, refused to quash the award. In summary, the High Court held as below:

(a) since the respondent had failed to file any response to the appellant's affidavit in reply dated 4 July 2019, the assertions by appellant were neither denied nor disputed, it is deemed an admission by the respondent, following the case of *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281; [1995] 1 CLJ 609. On this ground alone, the High Court was of the view that the judicial review application should be dismissed; G H

(b) in any event, the High Court also considered the submissions on the merits and dismissed the judicial review application on the following grounds:

(i) that cll 25 and 27 of the SPA stipulate that vacant possession of the property shall be delivered to the second respondent within 36 months from the date of the SPA and that the manner of delivery of vacant possession is upon, inter alia, water and electricity supply are ready for connection to the said property.; I

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(ii) that although vacant possession was delivered, there was no electricity connection to the subject property as required by cl 27(1) of the SPA as the application to TNB was sent only on 19 June 2018 and the deposit paid by the appellant (respondent here) on 26 June 2018;

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(iii) that s 16Q of the Housing Development (Control and Licensing) Act 1966, ('the HDA 1966') permits the filing of split claims if the first respondent chose to deal with the split claims and that the discretion should not be interfered with. In any event, although the claims were split, they were for two different claims, one was for technical claim and the other, for a non-technical claim;

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(iv) that the first respondent did not err in awarding damages to the second respondent for the non-connection of electricity to the property as it was undisputed that vacant possession was delivered without any electricity connection to the property in breach of cl 27 of the SPA, which states that water and electricity supply are ready for connection to the property; and

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(v) that the first respondent did not err in the computation of damages, and that the figure was not 'plucked out of the air' as the calculation was based on the analogy of the ten percent rule and that it was a reasonable method of computation as compensation for the second respondent who had been deprived of the opportunity to utilise and enjoy the property.

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[12] The respondent appealed against the High Court decision. After hearing the appeal, the Court of Appeal found that there were merits in the appeal and unanimously allowed the appeal with costs. In summary, the Court of Appeal held as below:

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(a) in respect of the High Court's finding that the respondent's failure to file any response to the appellant's affidavit in reply dated 4 July 2019, the Court of Appeal ruled that in a judicial review, further affidavit by the applicant after leave had been obtained is only permitted by the court if new matters not already disclosed in the leave stage are raised by the other party as specifically provided in O 53 r 7(1) Rules of Court 2012. Since the High Court did not indicate what new matters arose out of the affidavits of the appellant which requires a further affidavit from the respondent to rebut or answer, there are no merits in the High Court's finding on this issue;

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(b) the High Court also erred in the construction of cl 27(1)(c) of the SPA. It is pertinent to note that the HDA 1966 and its Schedules thereto had since been amended after the case of *Hoya Holding* and the court therein was in fact construing a provision of the sale and purchase agreement

which wordings is different from the relevant clause in the SPA in the present case. In *Hoya Holding*, the court therein was construing the words 'with the connection of' as opposed to the present case where the words used in cl 27(1)(c) of the SPA were 'ready for connection'. Clause 27(1)(c) of the SPA states 'ready for connection' and it does not mean that the property must be installed with an actual supply of electricity;

(c) the date of the SPA was 6 February 2017 and the respondent was required to deliver vacant possession of the property to the appellant on or before 6 February 2020. Both the tribunal and the High Court concluded that there was a late delivery of the property of 63 days calculated from 24 April 2018 to 26 June 2018 based on their erroneous construction of cl 27(1)(c) of the SPA as the electricity supply was in fact connected to the property on 11 July 2018, well before the time due for delivery of vacant possession which was on 6 February 2020. In the circumstances, the tribunal's award was without any basis and was made arbitrarily;

(d) the prohibition against the raising of fresh issue although not ventilated earlier in the courts below did not apply when the fresh issue was related to the matter of jurisdiction (*Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393; [1998] 2 CLJ 75 and *Asia Pacific Higher Learning Sdn Bhd v Majlis Perubatan Malaysia & Anor* [2020] 2 MLJ 1; [2020] 3 CLJ 153);

(e) it is imperative that s 16M(1) of the HDA 1966 be read together with s 16Q of the same Act. Section 16Q of the HDA 1966 clearly provided that the subject matter of the claim cannot be split nor more than one action can be filed in respect thereof if the combined amount claimed exceeds the jurisdiction conferred by s 16M(1) of the HDA 1966. The effect of s 16Q of the HDA 1966 when read as a whole could only mean that there is no prohibition against the filing of 'split claims' provided the total amount of the 'split claims' remains within the jurisdiction of the tribunal but not otherwise. The High Court's reliance on the word 'may' alone without construing the provision in its full and proper context is flawed;

(f) further, the following sentence in s 16Q of the HDA 1966 namely 'in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the tribunal', it clearly meant that claims filed by the appellant must refer to the same matter that is the property against the same party, the respondent; and

(g) even though the appellant's claims were for different claims, namely the technical claim and non-technical claim and even though the respondent had never raised any objection to the claims before the

tribunal, such matters were immaterial and the tribunal had no jurisdiction to hear the two split claims, as it was clearly beyond the jurisdiction of the tribunal and contrary to ss 16M(1) and 16Q of the HDA 1966. The court has inherent powers to set aside such orders exercisable on its own motion, even if parties did not raise objections on the issue of jurisdiction or implicitly acquiesce in the matter or brought by the party which the order purports to affect for that purpose.

OUR ANALYSIS AND DECISION

[13] Arising from the four questions of law for which leave was granted and the submissions raised by the parties in the instant appeal, we considered that it was necessary for this court to consider and determine the issues as follows. The first issue is whether the filing of two separate claims involving different matters in respect of the same property was contrary to ss 16M and 16Q of the HDA 1966 ('the jurisdiction issue'). The second issue is whether it was appropriate to award damages for the non-connection of electricity to the said property ('the damages issue').

The jurisdiction issue

[14] In any discussion on the HDA 1966, it is necessary to allude to the purpose and objective of the legislation. It is beyond doubt that the HDA 1966 was enacted as a piece of social legislation to protect house buyers. With that in mind, any term or provision in the statute must be interpreted in a way which ensures maximum protection for the house buyers against the developer (see *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals* [2020] 1 MLJ 281; [2020] 1 CLJ 162 and *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* [2021] 2 MLJ 60).

[15] It is therefore imperative that ss 16M and 16Q of HDA 1966 be interpreted in such a way as to provide protection of house buyers in keeping with the intention of Parliament. Now, s 16M of the HDA 1966 provides that the tribunal shall have the jurisdiction to determine a claim where the total amount in respect of which an award of the tribunal is sought does not exceed RM50,000. We noted that the words 'a claim' and not 'all the claims' are used in this section. However, s 16Q of the HDA 1966 provides that the claims may not be split, nor more than one claim brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the tribunal. We also noted that the word 'matter', instead of 'property' or 'housing accommodation', has been used in this section, the significance of which will become apparent in the discussion that follows.

[16] In the present case, and as alluded to at the outset, the appellant had filed two separate claims in respect of the property. The two claims are the technical claim, grounded on the failure of the respondent to provide adequate ceiling height and protruding beams and pillars with the claim amounting to RM40,000; and the second being the non-technical claim, grounded on the breach of manner of delivery of the property with the claim amounting to RM49,832. Both of the claims, viewed separately, did not exceed the monetary jurisdiction of RM50,000 under s 16M of the HDA 1966.

[17] As mentioned earlier, the Court of Appeal took the position that the words 'same matter' in s 16Q of the HDA meant that the claims filed by the appellant must refer to the same matter, that is, the property. With respect, we think this interpretation is incorrect. As submitted by the appellant's counsel, with which we agreed, if it was Parliament's intention for 'the same matter' to be interpreted as 'the same property' as suggested by the Court of Appeal, the drafters of the legislation would have used the term 'property' or 'housing accommodation'. In fact, the term 'housing accommodation' has been specifically defined in the s 3 of the HDA 1966, as follows:

> 'housing accommodation' includes any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises and such other type of accommodation as may be prescribed by the Minister from time to time to be a housing accommodation pursuant to section 3A.

[18] For the aforesaid reasons, we were unable to agree with the Court of Appeal that the words 'same matter' in s 16Q of the HDA must mean the 'same property'. We took the view that the 'same matter' can only mean the same issue or type of claim and not the same property. We, therefore, agreed with the position of High Court that there were two different matters in the present case, ie one was for technical matter and the other was for non-technical matter. As such, s 16Q of the HDA 1966 was inoperative in the present case.

[19] Having determined that the appellant may file split claims in respect of different and distinct matters, it becomes necessary to consider also whether the total amount of the combined claims may not exceed the monetary jurisdiction of the tribunal. In this regard, we considered it significant that the monetary jurisdiction of the tribunal of RM50,000 in s 16M of the HDA 1966 only applies to 'a claim' and not 'all the claims'. Thus, we agreed with the appellant's submission that s 16M does not limit the appellant's two separate and distinct claims to a combined amount lesser than RM50,000. As long as each of the appellant's claims in respect of different and distinct matters does not exceed the monetary jurisdiction of the tribunal, the appellant was not in violation of s 16M of the HDA 1966.

[20] Although we agreed with the Court of Appeal that ss 16M and 16Q of the Act should be read as a whole, nonetheless, we considered that the two separate and distinct claims filed by the appellant did not contravene any of the abovementioned sections. Since both of the appellant's claims were grounded on different and distinct matters and each of the appellant's claims was well within the jurisdiction of the tribunal, we were in agreement with the reasoning of the High Court. Accordingly, there was no reason for the High Court to intervene with the decision of the tribunal.

[21] For clarity, we would also add that there may arise a situation where a purchaser files two separate claims for the same matter in which the combined amount of the split claims exceeds the monetary jurisdiction of the tribunal. For example, as pointed out by the appellant's counsel, a claim of liquidated ascertained damages ('LAD') in the total sum of RM80,000 may be split by the purchaser into two claims of RM40,000 each. In such a case, the tribunal may exercise its discretion to disallow such claims to be split in order to prevent the purchaser circumventing the monetary jurisdiction of the tribunal.

The damages claim

[22] Now, the Court of Appeal held that since cl 27(1)(c) of the SPA states 'ready for connection', it does not mean that the subject property must be installed with actual supply of electricity. With respect, this cannot be the correct interpretation as it overlooks cl 1(k) of the SPA (which when read together with cl 27(1)(c) of the SPA) provides that 'ready for connection' means electrical points fully functional and supply is available for tapping into the property.

[23] It must follow that there was an obligation on the developer to provide actual supply of water and electricity to the property. Any other interpretation would be unfair to the purchasers save for the payment of any deposits for the supply of water and electricity if the SPA provided for it. In the circumstances, we agreed that the respondent was in breach of cl 27 of the SPA as the delivery of vacant possession was invalid since there was no electricity supply connected at the time. The High Court was right to observe that the appellant suffered losses as he was deprived of the opportunity to utilise and enjoy the property as it lacked electricity supply.

[24] Now, the Court of Appeal took the position that no losses could have been suffered by the appellant here as the respondent was still within the time frame for delivery of vacant possession. With respect, we were unable to accept this proposition. In our view, the time frame for delivery of vacant possession is quite separate from the manner of delivery of vacant possession. The appellant was entitled to claim compensatory damages for breach of cl 27 of the

SPA. This was separate from any claim for liquidated damages for late delivery of possession under cl 25 of the SPA. In the event, damages was justifiably ordered by the tribunal for the delay of 63 days for breach of cl 27.

CONCLUSION

[25] In the circumstances, and for the reasons mentioned, we found merit in the issues raised by the appellant. We answered question 1 in the affirmative. We agreed with the reasoning of the High Court. The objective was to protect the aggrieved purchasers of their rights to resort to the tribunal, which provides for an easier, cheaper and quicker avenue for aggrieved purchasers to claim damages or compensation from the housing developers. We declined to answer the rest of the questions as they pertained to a given state of facts. In any case, we had sufficiently stated our views as to the law in respect of the issues raised in the preceding discussion.

[26] The appeal was, accordingly, allowed with costs of RM50,000 to the appellant subject to allocator. The order of the Court of Appeal was set aside and the order of the High Court restored. Since the delivery of our decision, our learned sister Zaleha Yusof FCJ has since retired. This grounds of judgment is therefore prepared in accordance with s 78 of the Courts of Judicature Act 1964.

Appeal allowed with costs of RM50,000 to appellant subject to allocator; order of the Court of Appeal set aside; order of the High Court restored.

Reported by Dzulqarnain Ab Fatar